

PROB 12B  
(7/93)

Report Date: January 25, 2007

**United States District Court**

for the

**Eastern District of Washington**

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JAN 29 2007

JAMES R. LAHSEN, CLERK  
SPOKANE, WASHINGTON DEPUTY

**Request for Modifying the Conditions or Term of Supervision  
with Consent of the Offender**

*(Probation Form 49, Waiver of Hearing is Attached)*

Name of Offender: Fernando Gutierrez

Case Number: 2:03CR00201-001 &amp; 2:03CR02252-1

Name of Sentencing Judicial Officer: The Honorable Wm. Fremming Nielsen, Senior U.S. District Judge

Date of Original Sentence: 9/12/2005

Type of Supervision: Supervised Release

Original Offense: Smuggling Merchandise Into the  
United States, 18 U.S.C. §§ 545 and 2; and  
Distribution of a Controlled Substance, 21 U.S.C. §  
841 (a)(1) and 18 U.S.C. § 2

Date Supervision Commenced: 1/12/2007

Original Sentence: Prison - 18 Months; TSR - 36  
Months

Date Supervision Expires: 1/11/2010

**PETITIONING THE COURT**

To modify the conditions of supervision as follows:

- 20 You shall abstain from the use of illegal controlled substances, and shall submit to urinalysis testing, as directed by the supervising probation officer, but no more than six tests per month, in order to confirm continued abstinence from these substances.
- 21 You shall abstain from alcohol and shall submit to testing (including urinalysis and Breathalyzer), as directed by the supervising probation officer, but no more than six tests per month, in order to confirm continued abstinence from this substance.

**CAUSE**

The purpose of this petition is to apprise the Court of the status of the aforementioned case, in light of the Ninth Circuit Court of Appeals' finding in United States v. Stevens (9<sup>th</sup> Cir. 2005), and to request that the conditions of supervision be modified to authorize a maximum of six random drug tests per month.

Fernando Gutierrez was asked whether he would waive his right to a hearing and agree to the modifications as previously described. As indicated by the enclosed Waiver of Hearing to Modify Conditions of Supervised Release form, Mr. Gutierrez has agreed to the proposed modifications.

Prob 12B

**Re: Gutierrez, Fernando**

**January 25, 2007**

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Respectfully submitted,

by

Tommy Rosser

Tommy Rosser

U.S. Probation Officer

Date: January 25, 2007

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**THE COURT ORDERS**

- No Action
- The Extension of Supervision as Noted Above
- The Modification of Conditions as Noted Above
- Other

In Druha

Signature of Judicial Officer

Jan 25 2007

Date